IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8152 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ABHESINH MOHANISNH - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
MR DHIRENDRA MEHTA for Petitioner(s) : 1,
MS.PATEL, ASST.GOVERNMENT PLEADER for Respondent(s) : 1, 5,
MR MA KHARADI for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 30/08/2006

ORAL JUDGMENT

With the consent of learned Advocate appearing for both the sides, the main Special Civil Application itself is taken up for final hearing.

2. The short facts of the case are that the petitioner sold the land vide register sale-deed in favour of respondents No.2 to 3 on 16/5/1983. On 9/12/1983 the mutation entry No.2366 was recorded in the revenue record and the same was certified on 2/6/1984. The Assistant Collector, Olpad thereafter on 9/11/1990 after period of about 7 years issued a show-cause notice taking the said entry in revision on the alleged ground that the transfer was in violation of the provisions of Section 63 of the Bombay Tenancy and Agricultural Lands Act (hereinafter to be referred to as the 'Act') stating that the purchaser was not the agriculturist. It appears that on 28/2/1991, the Assistant Collector passed the order to cancel the entry No.2366 in R.T.S. proceedings and he also consequently passed the order of declaring the transaction. The matter was carried in appeal by the respondents No.2 to 4 before the Collector against the order of the Assistant Collector cancelling the entry. However, ultimately on 19/9/1991, the Collector dismissed the appeal.

3. It appears that thereafter the Mamlatdar and A.L.T. initiated the proceedings under Section 84 C of the Act, and ultimately, on 24/2/1992 the order passed by the Mamlatdar and A.L.T. permitting the restoration of

the land, failing which it was ordered that the land shall forfeited to the State Government. It appears that the respondents No.2 to 4 also preferred writ petitions before this Court being Special Civil Application No.2367 of 1992 after the order passed by the Mamlatdar. However, as the alternative remedy was available, this Court did not entertain the petition vide order dated 3/4/1992. The respondents No.2 to 4 thereafter preferred the appeal against the order of the Mamlatdar and A.L.T. under Section 84 C of the Act before the Assistant Collector and on 19/5/1992, the Assistant Collector dismissed the appeal. The matter was thereafter carried before the Revenue Tribunal in revision and Revenue Tribunal ultimately passed the judgment and order dated 4/5/1997 whereby the revision is allowed and the order of the Mamlatdar as well as the Assistant Collector in appeal are quashed and set aside and it is under these circumstances, the petitioner has approached to this Court by preferring the present petition.

4. I have heard Mr.Mehta, learned Counsel appearing for the petitioner and Ms.Patel, learned A.G.P. for respondents No.1 and 5 and learned Advocate, Mr.Kharadi for private respondents.

5. As such, it appears that the original petitioner transferred the land in favour of respondents No.2 to 4 by receiving the consideration and the petitioners are party to the said transaction of sale. In Special Civil Application No.4647 of 2005, this Court had an occasion to consider the question as to whether the seller of the property who is party to the transaction of the sale-deed after having pocketed the consideration would be entitled to invoke the jurisdiction of this Court under Article 227 of the Constitution or not and this Court in its judgment dated 18/3/2005 observed inter-alia as under.

"*In any case, the State has not preferred petition before this Court and the petitioner's father who was party to the transaction, as such, cannot be said to be aggrieved by the decision of the State Government. So will be the case, in the event, the petitioners are representing the interest as legal heirs of the party to the transaction. One who is a beneficiary of the transaction, once having taken benefit, cannot be allowed to contend that the transaction is illegal or is in contravention to statutory provision and, therefore, even though he has enjoyed the benefit of transaction, the property, which is already sold, should be given back to him or should be taken away by the statutory authority. At this stage, it would be worthwhile to refer to certain observations of the Division Bench of this Court in the case of* ***Patel Ratilal Maganbhai & others Vs. State of Gujarat, 2003 (1) GLR 562****. This Court had, in the said*

decision, while considering the challenge made by one of the parties to the transaction of sale against the decision of the authority, observed inter alia at para-13 as under:-

"... Seller of the transaction in case of voluntary sale is required to file a suit before the appropriate court for declaration that the sale is void, even if he is seeking a declaration that the transaction of sale is void on account of non-availability of permission of the competent authority. Since it is a question of voluntary sale, seeking declaration of such voluntary sale as void at the instance of the seller of the land, taking into consideration the decision of the Full Bench in the case of Jadav Prabhatbhai Jethabhai, 2001 (1) GLR 16, such seller much approach the Court within the period of limitation for declaration that the sale is invalid or void and the period of limitation as provided under law is of three years from the date of such sale."

It was also observed at the same para, relevant portion of which is as under:-

"In case, where permission to sell is required to be obtained of any competent authority, it is obligatory on the part of the seller to disclose to the purchaser that the permission of the competent authority is required to be obtained and thereafter, sale should be effected. When such informations are withheld by the seller from the purchase and subsequently on account of non-availability of permission, the sale is declared or void and the purchaser is visited with the consequences of depriving the property or otherwise, the purchaser can legitimately sue seller for recovery of the damages permissible under law. Therefore, in such circumstances, when any voluntary sale is required to be declared void, on account of breach of any of the provisions of law, the Court will have to examine as to whether seller had disclosed all the material facts before the purchaser regarding requirement of obtaining permission of the competent authority or not."

In the very decision, at para-18, it was observed, inter alia, as under:-

"But this shows the conduct of the appellants who are trying to invoke extraordinary equitable jurisdiction of this Court under Article 226 of the Constitution. It is well settled principle of law that the powers under Article 226 of the Constitution are discretionary and if this Court finds that the equitable considerations are against the person who tries to invoke the jurisdiction, the Court may decline to entertain the petition because the powers vested are not to encourage wrong actions, who themselves are party to the litigation."

Further, at para-19, it was, inter alia, observed as under:-

"A Court of equity when exercising its equitable jurisdiction under Art.226 must so act as to prevent perpetration of a legal fraud and the Courts are obliged to do justice by promotion of good faith, as far as it lies within their power. Equity is always known to defend the law from crafty evasions and new subtleties invented to evade law."

In the present case also, the facts are more or less common and, therefore, in view of the decision of the Division Bench of this Court, it cannot be said that the order passed by the State Government deserves to be interfered with at the instance of the petitioners.

Mr.Jani, the learned counsel appearing for the petitioner made an attempt to submit that in the said matter before the Division Bench, initiation of the first proceeding before the authority was at the instance of the person who was party to the transaction of the sale, whereas in the present case, authority suo motu initiated proceedings and, therefore, he submitted that the said decision may not be made applicable to the facts of the present case. I am afraid such a contention can be accepted from the mouth of the person who is a party to the transaction of sale and who has pocketed the consideration and thereafter, has approached to this

Court for invoking the jurisdiction under Article 226 of the Constitution on the ground that the transaction was invalid. No such distinction as sought to be canvassed by Mr. Jani would make out settled principle of law for the purpose of exercising discretionary and equitable jurisdiction of this Court under Article 226 of the Constitution. In any event, statutory period of limitation for declaring the sale as void at the instance of the petitioner is over in view of the decision of the Division Bench of this Court and further, when the petitioner has received consideration and has enjoyed the benefit thereto of the transaction, it cannot be said that the petitioner is prejudiced by the order passed by the State Government in exercise of the revisional jurisdiction whereby the proceedings for cancellation of the sale are set aside. (emphasize supplied)"

Therefore, based on the same principle, the petitioner would not be entitled to invoke the discretionary jurisdiction of this Court under Article 227 of the Constitution. In the event, the petitioner is desirous to declare to have the declaration of the transaction as null and void or is desirous to get back his land on the alleged ground that the transaction was hit by the provisions of the Act, the petitioner would be required to file civil suit as per the decision of the Division Bench of this Court in case of **Patel Ratilal Maganbhai (Supra)** and the period of limitation has expired long back even otherwise also.

6. Mr.Mehta, learned Counsel appearing for the petitioner attempted to make the distinction by contending that in the order of the Mamlatdar and A.L.T.

restoration of the land in question is ordered and consequently the petitioner would be entitled to get back the land and therefore he submitted that the petitioner can be said as aggrieved party to the proceedings and would be entitled to invoke the jurisdiction of this Court under Article 227 of the Constitution.

7. In my view, restoration is one of the option to avoid forfeiture of the land otherwise the land is forfeited / confiscated to the State Government even as per the order of the Mamlatdar. Further, so far as the authority under the Act is concerned, the Revenue Tribunal ultimately has concluded in favour of the purchaser- respondents No.2 to 4 and the transaction is not held as void or illegal and the proceedings initiated by the Mamlatdar and by the Assistant Collector thereafter and the order passed by the Collector thereafter are quashed and set aside by the Revenue Tribunal which itself is the authority under the Act. Therefore, when the authority under the Act has held the transaction as valid, it hardly lies in the mouth of the seller who is party to the transaction to contend that the transaction be declared invalid, more particularly, when he has enjoyed the benefit of the transaction by pocketing the consideration long back and he has lost the

remedy even by filing civil suit or declaration that the transaction is null and void or illegal. The remedy of getting back the land which is not permissible directly, cannot be allowed to be done indirectly by invoking the jurisdiction of this Court under Article 227 of the Constitution. Therefore, the distinction as sought to be canvassed on behalf of the petitioner is ill-founded and is of no help to the petitioner.

8. Apart from the above, the perusal of the impugned judgment of the Tribunal shows that the Tribunal has quashed the proceedings under the Act on the ground of delay and latches, inasmuch as, there was delay of seven years in initiation of the proceedings after the transaction of sale was entered. The Tribunal in the said judgment has relied upon the decision of this Court on the aspects of delay. There was delay of seven years. Such exercise of the discretion by the Tribunal for quashing of the proceedings under the Act on the ground of delay of seven years after the land was transferred, cannot be said as having committed any jurisdictional error, nor exercise of discretion can be said as perverse in any manner. On the contrary even as per the settled legal position, the Tribunal as rightly quashed the proceedings on the ground of delay and latches. It may be

recorded that while considering the matter on the aspects of delay and the initiation of the proceedings after a lapse of unreasonable period, the Tribunal has relied upon the decision of the Apex Court in case of ***Raghavnatha Vs. State of Gujarat, reported at A.I.R. 1969 SC***, as well as, other decisions of this Court and therefore, if the Tribunal has exercised the power by following decisions of the Apex Court as well as of this Court, the same are in conformity with the principles of judicial discipline. Therefore it cannot be said that any error is committed by the Tribunal which deserves to be interfered with by this Court in exercise of powers under Article 227 of the Constitution.

9. In view of the above, the petition fails. Rule is discharged. Interim relief granted earlier shall stand vacated. Considering the facts and circumstances, there shall be no order as to costs.

(JAYANT PATEL, J.)

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